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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,132	06/30/2006	Daniel Steiger	EIS-009	1155
48234 7590 05/10/2011 MEREK, BLACKMON & VOORHEES, LLC 673 S. WASHINGTON ST ALEXANDRIA, VA 22314				
EXAMINER WILLIAMS, LEA				
ART UNIT		PAPER NUMBER		
1789				
MAIL DATE		DELIVERY MODE		
05/10/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/585,132

Applicant(s)

STEIGER ET AL.

Examiner

LELA S. WILLIAMS

Art Unit

1789

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 30 March 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's arguments filed March 30, 2011 have been fully considered but they are not persuasive. Therefore, the following action is made final.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. **Claims 1-2 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cajigas US 4,289,788 in view of Fitzpatrick et al. GB 2,035,035, as evidenced by, <http://www.wisegeek.com/what-is-coconut-milk.htm>**

Regarding claims 1 and 2, Cajigas discloses a method of making instant powders wherein alginate (col. 4, lines 44-52) and lecithin (col.6, lines 13-35) is applied to yogurt powders which also comprises dried skim milk (col. 7, lines 1-10), thus providing free surface fat. All components are either dry blended or spray dried (col.7, line 60-col. 8, line 7). Cajigas discloses "[l]ecithin also acts as an agent to wet or hydrate..." (col. 6, line 26), thereby rendering it obvious that lecithin is applied as a liquid; however, the reference states the use of alginate in powder form.

Fitzpatrick discloses the production of a high fat instantised milk powder (page 1, line 57) comprising free fat (page 1, line 100), wherein lecithin is combined with water and sprayed onto the milk powder particles (page 1, lines 65-75), the particles agglomerate and are dried (page 1, line 60). Fitzpatrick discloses the use of lecithin can lead to viscosity problems, however applying it as an aqueous emulsion overcomes said problems. Given it is known that alginate also effects the viscosity and given it functions as a thickener, one of ordinary skill in the art

would have been motivated by the teaching of Fitzpatrick to apply both the lecithin and alginate of Cajigas, by combining with water and spraying the components onto the powder particles, in efforts to control the viscosity of the final product.

Regarding claims 4 and 5, as noted above, the reference discloses the use of a variety of dried milk product suitable for use in the composition (col. 7, lines 1-12) and although skimmed milk may be preferred, the reference does not limit the milk component to a specific type or teach against any type of milk, including coconut milk. It is well known that different milks have different properties as evidenced by the internet webpage titled *What is Coconut Milk* which discloses coconut milk is easily metabolized by the body, it is anti-carcinogenic, anti-microbial, anti-viral, and the main saturated fat in the milk is lauric acid, which has been shown to promote brain and bone health. Therefore, given the reference does not limit the milk component, it would have been obvious to one of ordinary skill in the art at the time of the invention to choose any type of dried milk, including coconut milk, to achieve the desired health benefits.

Response to Arguments

3. Applicant's arguments, with respect to claims 1-2 and 4-5 rejected under 35 U.S.C. 112, second paragraph have been fully considered and are persuasive. The 35 U.S.C. 112, second paragraph has been withdrawn. However, applicant states on page 2 of Remarks "the claim actually recite that the lecithin and alginate are dried rather than that the powders are dried." The present claim, as currently written, does not recite this. As currently written, the claim recites the lecithin and alginate is sprayed onto the powder particles and all is dried.

4. Applicant's arguments with respect to claims 1-2 and 4-5 rejected under 35 U.S.C. 103(a) has been fully considered but they are not persuasive. Applicant states that Cajigas refers to the lecithin as a "wetting agent"; however, the reference does not state "wetting agent". Cajigas states "[l]ecithin also acts as an agent to wet or hydrate the whey protein absorption layer around the casein" (col. 6, line 26), given the language of "wet or hydrate" it is expected that the lecithin will be in liquid form since it "wets" the layer. Further, even if the lecithin was in dry form, it would still have the same characteristics e.g., provide good wettability to powders. Given that applicant has not provided any evidence to the contrary, i.e. persuasive data, it is the examiners position that the form of lecithin, either liquid or dry, holds no patentable weight given that both will perform in the same manner once applied to powders.

Applicant also states that Fitzpatrick teaches away from using its process in the invention of Cajigas (pg. 3). However, Fitzpatrick does not teach away; the reference does not state the process *can not* be utilized with milk powders which contain a low level of fat, it merely states that low fat powders do not necessarily need the application of lecithin, whereas powders having an excess of 10% fat do. Given that lecithin is taught by both Cajigas and Fitzpatrick, to be a useful wetting agent, one of ordinary skill in the art would have been motivated to apply lecithin to milk powders regardless of the fat content and to apply the teachings of Fitzpatrick with Cajigas.

With respect to claims 4 and 5, given that the reference discloses the use of a variety of dried milk product suitable for use in the composition (col. 7, lines 1-12) and although skimmed milk may be preferred, the reference does not limit the milk component to a specific type or teach against any type of milk, including coconut milk. Applicant states that *What is Coconut*

Milk is not prior art with respect to the invention; however the reference is used as an evidentiary reference, as such, “[i]n certain circumstances, references cited to show a universal fact need not be available as prior art before applicant’s filing date. In re Wilson, 311 F.2d 266, 135 USPQ 442 (CCPA 1962)... References which do not qualify as prior art because they postdate the claimed invention may be relied upon to show the level of ordinary skill in the art at or around the time the invention was made. Ex parte Erlich, 22 USPQ 1463 (Bd. Pat. App. & Inter. 1992).” (See MPEP 2124). *What is Coconut Milk* is applied as evidence to teach that it is well known that different milks have different properties. The page discloses coconut milk is easily metabolized by the body, it is anti-carcinogenic, anti-microbial, anti-viral, and the main saturated fat in the milk is lauric acid, which has been shown to promote brain and bone health. Therefore, given the Cajigas in view of Fitzpatrick does not limit the milk component, it would have been obvious to one of ordinary skill in the art at the time of the invention to choose any type of dried milk, including coconut milk, to achieve the desired health benefits.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. FR2398525 discloses the use of a lecithin solution to improve the wettability of powder milk products (Entire Document).
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Humera Sheikh can be reached on 571-272-0604. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Humera N. Sheikh/
Supervisory Patent Examiner, Art Unit 1789

/LELA S. WILLIAMS/
Examiner, Art Unit 1789

